



DEPARTMENT OF HEALTH & HUMAN SERVICES

Tom [Signature]
Fly [Signature]
File 5-11.4
Public Health Service
Indian Health Service

Rockville MD 20857

JUL 19 1988

RFO: 88-14

MEMORANDUM

TO : Darrel Grinstead, Associate General Counsel, Business and
Administrative Law Division

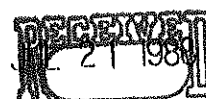
FROM : Director
Division of Legislation and Regulations/OPEL

SUBJECT: Request for Opinion 88-14: Acceptance of a Conditional Gift of Real
Property from an Indian Tribe.

Attached is a memorandum, incorrectly dated June 23, 1987, which asks for your advice and guidance on the Indian Health Service (IHS) acceptances of an offer by the Gila River Tribe of Arizona to donate a building (apparently on trust land) to IHS for use as a Regional Youth Alcoholism Treatment Center. Also, attached are a number of documents that may be of help in addressing the question. You may wish to discuss the proposal with Mr. Tom Bedick, Director, Division of Facility Management at, 443-1247.

Richard J. McCloskey
Richard J. McCloskey

Attachments



2nd Copy

DEPARTMENT OF HEALTH AND HUMAN SERVICES

File 5-11.4

- : JUN 23 1988
- : Associate Director
Office of Environmental Health and Engineering
- : Accepting Donations of Land and Structures
- : Associate Director
Office of Planning, Evaluation and Legislation

The Gila River Tribe in Arizona would like to donate a building to the Indian Health Service (IHS) to be used as a Regional Youth Alcoholism Treatment Center (RYATC) for the Phoenix Area. According to information received from Charles Carter, Real Property, Bureau of Indian Affairs (BIA), the IHS has the authority to accept such donations currently. This opinion is based on provisions of 25 USC 451 giving the Secretary of the Interior authority to accept "... donations of funds or other property ..." Public Law 83-568 transferred the authorities of the Secretary of the Interior to the Public Health Service; therefore, it appears that Mr. Carter is correct. Copies of the pertinent statutes are attached.

If appropriate, the transfer would be handled at the Area Office level under the following procedures:

- ° The Tribe would pass a resolution authorizing transfer and prepare a deed.
- ° The responsible BIA Area trust office would review the documents and approve.
- ° The IHS Area Office would accept the building and enter it onto its inventory of owned property.

Please obtain an Office of the General Council opinion regarding the appropriateness of IHS accepting such a gift directly from this or any other tribe. A timely response will be appreciated because establishing a RYATC in the Phoenix Area will be directly affected by our authority to obtain this structure.

(Sgd.) Bill F. Pearson P. E.

Bill F. Pearson, P.E., L.S.

cc: Judy Breitman, PHS
Mary Lou Stanton, Phoenix Area
Prepared by: IHS/OEHE
Revised by: JWASKIEWICZ/nlh 6/21/88

Gene Price, Phoenix Area
/88 443-1247 DOC#1118V

FILE
COPY

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE
OFM	BEDSIC	6/21						
OEHE	Pearson	6/21						



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service

Memorandum

Date: JUN 23 1987

From: Associate Director
Office of Environmental Health and Engineering

Subject: Accepting Donations of Land and Structures

To: Associate Director
Office of Planning, Evaluation and Legislation

Jo DP EL
6/23/88
3:17 PM

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Bill F. Pearson, P.E., L.S.


JUN 16 1988

NOTE TO: Tom Bedick/IHS

Re: Acceptance of Donated Property from Tribes

With reference to our recent conversation, I discussed the subject issue with Chuck Carter. Chuck believes we do have the authority to accept donated property by virtue of 25 USC 451 and P.L. 83-568.

As previously suggested, IHS should obtain a legal opinion from OGC, and I have prepared the attached draft memo to Duke McCloud for your signature. I believe we need the opinion for this case as well as future ones. Feel free to revise the draft, as appropriate. Please keep me posted.


Judy Breitman

Attachment

DRAFT

Director, Division of Facilities Management/OEHE/IHS

Donation of Real Property to IHS

Duke McCloud, Senior Attorney
Office of the General Counsel/PHS

IHS would like to accept the donation of a building located on reservation land from the Gila Bend Tribe, AZ to use for a Youth Alcoholism Program. According to information received from real property staff in BIA, IHS currently has this authority. This opinion is based on 25 USC 451 which gives the Secretary of the Interior the authority to accept "...donations of funds or other property..." P.L. 83-568 transferred the authorities of the Secretary of the Interior to PHS; therefore, it appears that BIA is correct. Copies of the pertinent statutes are attached.

The transfer would be handled at the area office level under the following procedures:

- o The Tribe would pass a resolution authorizing the transfer and prepare a deed.
- o The trust office in the BIA area would review the documents and approve.
- o The IHS area office would accept the building and enter it into its inventory of owned property.

Your opinion and advice on this matter will be appreciated.

Thomas M. Bedick, P.E.

Attachments

Breitman:6/16/88
JUDY01/duke memo

Public Law 568 - 83d Congress
Chapter 658 - 2d Session
H. R. 303

AN ACT

To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all functions, responsibilities, authorities, and duties of the Department of the Interior, the Bureau of Indian Affairs, Secretary of the Interior, and the Commissioner of Indian Affairs relating to the maintenance and operation of hospital and health facilities for Indians, and the conservation of the health of Indians, are hereby transferred to, and shall be administered by, the Surgeon General of the United States Public Health Service, under the supervision and direction of the Secretary of Health, Education, and Welfare: *Provided*, That hospitals now in operation for a specific tribe or tribes of Indians shall not be closed prior to July 1, 1956, without the consent of the governing body of the tribe or its organized council.

Indian hospitals.
Transfer to Public Health Service.

Restriction.

SEC. 2. Whenever the health needs of the Indians can be better met thereby, the Secretary of Health, Education, and Welfare is authorized in his discretion to enter into contracts with any State, Territory, or political subdivision thereof, or any private nonprofit corporation, agency or institution providing for the transfer by the United States Public Health Service of Indian hospitals or health facilities, including initial operating equipment and supplies.

HEW transfer to state or private institutions.

It shall be a condition of such transfer that all facilities transferred shall be available to meet the health needs of the Indians and that such health needs shall be given priority over those of the non-Indian population. No hospital or health facility that has been constructed or maintained for a specific tribe of Indians, or for a specific group of tribes, shall be transferred by the Secretary of Health, Education, and Welfare to a non-Indian entity or organization under this Act unless such action has been approved by the governing body of the tribe, or by the governing bodies of a majority of the tribes, for which such hospital or health facility has been constructed or maintained: *Provided*, That if, following such transfer by the United States Public Health Service, the Secretary of Health, Education, and Welfare finds the hospital or health facility transferred under this section is not thereafter serving the need of the Indians, the Secretary of Health, Education, and Welfare shall notify those charged with management thereof, setting forth needed improvements, and in the event such improvements are not made within a time to be specified, shall immediately assume management and operation of such hospital or health facility.

Condition.

Restriction.

Failure to meet requirements.

SEC. 3. The Secretary of Health, Education, and Welfare is also authorized to make such other regulations as he deems desirable to carry out the provisions of this Act.

HEW regulations.

SEC. 4. The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), which the Director of the Bureau of the Budget shall determine to relate primarily to the functions transferred to the Public Health Service of the Department of Health, Education, and Welfare hereunder, are transferred for use in the administration of the functions so transferred. Any of the personnel transferred pursuant to this Act which the transferee agency shall find to be in excess of the personnel necessary for the administration of the functions

Personnel, etc.

68 Stat. 674.
68 Stat. 675.

SUBCHAPTER III—CONTRACTS WITH STATES

§ 451. Donations for Indians; use of gifts; annual report to Congress

The Secretary of the Interior may accept donations of funds or other property for the advancement of the Indian race, and he may use the donated property in accordance with the terms of the donation in furtherance of any program authorized by other provision of law for the benefit of Indians. An annual report shall be made to the Congress on donations received and allocations made from such donations. This report shall include administrative costs and other pertinent data.

(Feb. 14, 1931, c. 171, 46 Stat. 1106; June 8, 1968, Pub.L. 90-333, 82 Stat. 171.)

Historical Note

1968 Amendment. Pub.L. 90-333 expanded the area of permissible uses to which the Secretary may put donated property by substituting provisions allowing the inclusion of programs otherwise authorized by law intended to benefit Indians for provisions limiting the permissible uses to programs otherwise authorized by law only if it could be shown that the property would benefit a particular

Indian institution or individual, and added provisions for an annual report to Congress on donations received and allocations made from such donations.

Legislative History. For legislative history and purpose of Pub.L. 90-333, see 1968 U.S. Code Cong. and Adm. News, p. 2045.

Cross References

Deposit of funds received in Treasury as trust funds, see section 1321 of Title 31, Money and Finance.

Code of Federal Regulations

Land acquisitions, see 25 CFR 151.1 et seq.

Library References

Indians [§7](#).

C.J.S. Indians [§ 22](#).

§ 452. Contracts for education, medical attention, relief and social welfare of Indians

The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory.

(Apr. 16, 1934, c. 147, § 1, 48 Stat. 596; June 4, 1936, c. 490, 49 Stat. 1458.)

1936 Amendment. substituted "with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution", "the State or Territory and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory," and "the

Authorization of appropriations under continuing status as groups, etc., section, see Study and investigation in accordance with Vocational education of Title 20, I

Distribution of funds in negotiations with States, see 25 Restrictions on federal Appendix.

Indians [§24](#).

Discrimination in duty of federal agents

1. Duty of federal agents. Federal government obligations to the Indians to provide benefits in the ab in a treaty, agree statute. Vigil v. F.2d 931.

Federal government provide for education needed by Indian

§ 453.

The Secretary of the Interior is authorized to